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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. IRA EARL POWELL, JR., Defendant and Appellant.	E070561 (Super.Ct.No. FWV1302024) OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Jeanine G. Strong, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting and Warren J. Williams, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Ira Earl Powell, Jr., appeals from the trial court's denial of his second Proposition 47 petition. On appeal, defendant argues (1) the trial court erred by failing to exercise its discretion to consider his second petition on the merits because the California Supreme Court has ruled that successive Proposition 47 petitions are permitted; and (2) his second petition made a prima facie showing that he is eligible for resentencing and the evidence in the record shows that the value of the stolen property was under $950. In the alternative, defendant contends a remand is necessary for the trial court to conduct an evidentiary hearing and, if necessary, to allow defendant leave to amend the second petition.

For the reasons explained below, we agree with defendant that successive Proposition 47 petitions are permitted. However, defendant's second petition failed to establish the value of the stolen goods was less than $950. Accordingly, we affirm the order denying defendant's second petition to reduce his commercial burglary conviction to a misdemeanor without prejudice to consideration of a subsequent petition that supplies evidence of the value of the stolen property.

II

FACTUAL AND PROCEDURAL BACKGROUND[1]

On June 4, 2013, defendant, who was homeless and loitering in the area, saw the back door to a UPS store was ajar. He grabbed three packages near the entryway and ran. An employee saw the theft and followed defendant. The employee found defendant standing by a Dumpster, opening the packages. When the employee approached, defendant dropped the packages and ran away. All three packages were recovered and contained a pair of leather boots, film negatives, and a silver razor scooter. No value for the items was provided in the police report. Two of the packages were taped and repaired, and one package was ripped and had to be replaced, at a cost of $2. The investigating officer took photos of the stolen and recovered items.

On June 18, 2013, a felony complaint was filed charging defendant with carrying a dirk or dagger (Pen. Code, § 21310; count 1),[2] being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a); count 2), and second degree commercial burglary (§ 459; count 3). The complaint also alleged that defendant had suffered one prior serious or violent felony strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and five prior prison terms (§ 667.5, subd. (b)).

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[1] The factual background is taken from the police report.

[2] All future statutory references are to the Penal Code unless otherwise stated.

On June 25, 2013, defendant pled no contest to counts 1 and 3 and admitted one prior prison term. In return, the remaining allegations were dismissed, and defendant was sentenced to a total term of four years in state prison.

On November 4, 2014, the voters of California passed Proposition 47, reducing some felony theft-related offenses—including second degree commercial burglary—to misdemeanors when the value of the stolen property does not exceed $950. The initiative also created a procedure allowing offenders to petition to designate eligible felony convictions as misdemeanors and obtain resentencing if they "would have been guilty of a misdemeanor under" the provisions added by Proposition 47. (§ 1170.18, subds. (a), (f).)

On December 17, 2014, defendant, in propria persona, filed a petition for resentencing under section 1170.18, using a form adopted by the "Superior Court of California, County of Lake." The form did not provide a space to describe his offenses or explain his eligibility for Proposition 47 relief. With the exception of his initialed plea form, defendant did not include any other information with his petition.

On January 23, 2015, the trial court summarily denied defendant's petition, finding defendant did "not satisfy the criteria in Penal Code [section] 1170.18 and is not eligible for resentencing."

Approximately three years later, on January 29, 2018, defendant, represented by a public defender, filed a "Motion for Reconsideration[/]Penal Code 1170.18 Petition" as

to count 3 only, the second degree commercial burglary conviction.[3] The second petition included a declaration of counsel alleging, in pertinent part, the stolen goods were recovered and that the value of the stolen items "was less than $950, to wit $2." The second petition also included a copy of the felony complaint and a five-page police report prepared by the investigating officer dated June 12, 2013.

A hearing on defendant's second petition was held on May 18, 2018. At that time, the following colloquy occurred:

"[DEFENSE COUNSEL]: Just briefly, just to refresh the Court's memory, this was a theft of packages from UPS stores.

"THE COURT: When he went into the back?

"[DEFENSE COUNSEL]: Well, it says, according to the discovery, which is part of the Court's file, he went into an entryway near a door because he saw some packages. He takes the packages and runs out with them, somebody yells at him, so he drops them near a commercial [D]umpster near the back.

"THE COURT: And the prosecution states that was an area not open to the public.

"[DEFENSE COUNSEL]: There's no case law about an area not open to the public. There's case law, you know, if it's done during business hours or closed.

"THE COURT: Right.

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[3] Defendant refers to this motion for reconsideration as "the second petition." For the sake of clarity and consistency, we refer to this motion as "the second petition" as well.

"[DEFENSE COUNSEL]: I didn't find any case law about that.

"[THE PROSECUTOR]: There's split authority. There's a case up on appeal right now about that, but that's not our main argument.

"[DEFENSE COUNSEL]: Also—and packages, themselves, I guess, the value was listed as $2.00 because that was the value to UPS as far as . . . the material packaging. What was inside were leather boots, a Razor Scooter, and film negatives. I can't establish that those are over 950 or that they are under 950. And, I think, what's in the police report is all we have got. The value is listed as $2.00.

"I think the client, under *Estrada*,[4] gets the benefit. The Court should grant this petition because I don't think the value can be—the value is not shown to be over $950; negatives, Razor Scooter, and leather boots together. If we were talking about a car, I could see why the Court would want to err on the side of caution and deny. We are talking about three packages that is (sic) listed in the police report valued as $2.00. I'm asking the Court to grant the petition.

"[¶] . . . [¶]

"[THE PROSECUTOR]: Yes. So three and a half years ago the Court already denied the petition. It was not—it was not without prejudice. There's been no change in circumstances. Basically, they attach the police report, but that was the same evidence that was heard three and a half years.

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[4] *In re Estrada* (1965) 63 Cal.2d 740.

"Per *People v. Sherow*[(2015) 239 Cal.App.4th 875 (*Sherow*)], the petitioner, who is the defendant, has the burden of proof to prove that the items stolen were less than 950, and there's nothing in the police report to indicate the value of the items that were stolen. It says damage to boxes, but that's not the contents of what he stole. So without that, they have not met their burden. The Court has already ruled and the petition should be denied again.

"THE COURT: I see in the minute order that . . . the petition under Prop. 47 was denied in January of 2015. Wouldn't the proper remedy had been to appeal or take a writ on that denial?

"[DEFENSE COUNSEL]: I agree. I guess, if it was done without prejudice, they probably figured, maybe, they can get some more information. Apparently, we can't get any more information.

"THE COURT: And we don't have any additional information.

"[DEFENSE COUNSEL]: Yeah."

The court thereafter denied defendant's second petition, finding "the same petition was previously denied on the merits, and there's no new or additional information or no new law on the subject, the petition is again denied."

On May 21, 2018, defendant filed a timely notice of appeal.

III

DISCUSSION

Defendant contends that the trial court erred by failing to exercise its discretion to consider his second petition on the merits and the California Supreme Court has ruled that successive Proposition 47 petitions are permitted. He also argues that the second petition made a prima facie case he was eligible for resentencing and that the value of the stolen items was under $950. In the alternative, defendant requests that the matter be remanded to the trial court with directions to conduct an evidentiary hearing on the fair market value of the stolen property and if necessary, allow defendant leave to amend the second petition.

The People implicitly concede that defendant's second petition was not barred by the filing of a prior petition for resentencing but assert that defense counsel filed a motion for reconsideration of the first petition and not a second petition. The People also contend that even assuming the motion for reconsideration constituted a second or amended petition, the court properly denied the second petition on the merits because defendant failed to meet his burden of showing that the value of the stolen items was less than $950.

A. *The Standard of Review*

"We review a '[trial] court's legal conclusions de novo and its findings of fact for substantial evidence.' [Citation.] The interpretation of a statute is subject to de novo review on appeal. [Citation.] 'In interpreting a voter initiative like [Proposition 47], [the

courts] apply the same principles that govern statutory construction.' [Citation.] '"The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.]"' [Citation.] 'In determining intent, we look first to the words themselves. [Citations.] When the language is clear and unambiguous, there is no need for construction. [Citations.] When the language is susceptible of more than one reasonable interpretation, however, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. [Citations.]' [Citation.]" (*People v. Perkins* (2016) 244 Cal.App.4th 129, 136 (*Perkins*).)

B. *Statutory Framework*

In November 2014, the voters passed Proposition 47, the Safe Neighborhoods and Schools Act. Proposition 47 reduced certain nonviolent drug and theft offenses to misdemeanors. It also added section 459.5, which provides: "(a) Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars ($950). Any other entry into a commercial establishment with intent to commit larceny is burglary . . . . [¶] (b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property."

C. *Successive Petitions*

Proposition 47 also enacted section 1170.18. A defendant seeking resentencing or redesignation of a felony conviction as a misdemeanor may petition or file an application pursuant section 1170.18. Specifically, section 1170.18 states that a defendant "may petition for a recall of sentence" if the defendant was "serving a sentence for a conviction . . . of a felony or felonies" and "would have been guilty of a misdemeanor under [Proposition 47] had [Proposition 47] been in effect at the time of the offense." (§ 1170.18, subd. (a).) "Upon receiving a petition," the trial court must determine whether the defendant is entitled to relief. (§ 1170.18, subd. (b).) If the defendant is entitled to relief, the defendant's "felony sentence shall be recalled and the [defendant] resentenced to a misdemeanor." (§ 1170.18, subd. (b).) If the defendant has already completed the sentence for the felony conviction for which the defendant seeks relief, the defendant instead "may file an application . . . to have the felony conviction or convictions designated as misdemeanors." (§ 1170.18, subd. (f).) "If the application satisfies [the requisite criteria], the court shall designate the felony offense or offenses as a misdemeanor." (§ 1170.18, subd. (g).)

In this case, we disagree with the People's claim that the second petition was a "motion for reconsideration" of defendant's 2014 petition rather than a new petition. Although defense counsel characterized the second petition as a "motion for reconsideration," the record is clear that the petition was really a second petition. That "motion for reconsideration" included a "petition for resentencing." The attached

petition for resentencing notes that defendant had completed his sentence. In addition, the second petition included a declaration from defense counsel, the felony complaint, and the police report. When defendant, in propria persona, filed his first petition for resentencing in December 2014, defendant was serving his sentence. Furthermore, defendant had not attached a declaration, the complaint, or police report to his first petition. Moreover, contrary to the trial court's belief, substantial new law has developed concerning Proposition 47 relief since December 2014.

Defendant contends multiple petitions regarding the same conviction are permitted because section 1170.18 does not preclude them and is to be liberally construed. The language of section 1170.18 does not expressly state whether a defendant is limited to a single petition, or whether the defendant may file successive petitions or amended petitions, where the first fails to satisfy the statutory criteria. Where, as here, a statute is silent, we employ the ordinary presumptions and rules of statutory construction. (*Perkins*, *supra*, 244 Cal.App.4th at p. 136.)

The state has a "'weighty interest in the finality of judgments in criminal cases'" and thus there are rules limiting a defendant's ability to collaterally attack a conviction or sentence. (*Gomez v. Superior Court* (2012) 54 Cal.4th 293, 309.) For example, procedural rules barring successive habeas corpus petitions "'are necessary both to deter use of the writ to unjustifiably delay implementation of the law, and to avoid the need to set aside final judgments of conviction when retrial would be difficult or impossible.'" (*Id*. at p. 308.) However, Proposition 47 reflects an intent to allow a challenge to a

criminal sentence if the sentence is based on a felony conviction for an offense that is now eligible for misdemeanor treatment. In this regard, Proposition 47 expressly states that one of its purposes is to "[r]equire misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014), text of Prop. 47, § 3, p. 70 (hereafter Guide).) Requiring misdemeanor treatment of eligible offenses would help fulfill another purpose of Proposition 47, which "is to reduce the number of nonviolent offenders in state prisons, thereby saving money [for corrections] and focusing prison on offenders considered more serious under the terms of the initiative. (See Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70; . . . .)" (*Harris v. Superior Court* (2016) 1 Cal.5th 984, 992.) Moreover, Proposition 47 expressly states that it "shall be broadly construed to accomplish its purposes" and "shall be liberally construed to effectuate its purposes." (Guide, *supra*, text of Prop. 47, §§ 15, 18, p. 74.) Broadly construing section 1170.18 to allow a second petition regarding a felony conviction that was not raised in a prior petition would further Proposition 47's purposes, whereas barring a petition simply because it was a second petition and without regard to its merits would not.

Other provisions of section 1170.18 support the conclusion that it should not be narrowly construed to impose a procedural bar to a second petition in this case. Section 1170.18 has been amended to extend the original three-year deadline by which a petition or application must be filed. (Compare § 1170.18, subd. (j) [petition or application generally must be filed on or before Nov. 4, 2022] with former § 1170.18,

subd. (j) [petition or application generally must be filed within three years after the effective date of Prop. 47].) Extending the original deadline for filing a petition by five years, from 2017 to 2022, reflects an intent to enlarge, rather than restrict, the opportunity for a defendant to seek relief under section 1170.18. Likewise, construing section 1170.18 to allow a second petition enlarges, rather than restricts, the opportunity for a defendant to obtain relief.

At the same time, section 1170.18 expressly states that it is not intended to "diminish or abrogate the finality of judgments in any case that does not come within the purview of this section." (§ 1170.18, subd. (n); see former § 1170.18, subd. (n).) This provision indicates that a defendant who does come within the purview of section 1170.18—that is, a defendant who has a case with an eligible felony conviction—should be permitted to petition for relief notwithstanding the importance of the finality of judgments.

"As to public policy, California courts have long adhered to the 'policy that cases should be tried on their merits rather than dismissed for technical defects in pleading.' [Citations.] In furtherance of that policy, 'liberal interpretation and amendment of pleadings is strongly favored . . . .' [Citations.]" (*People v. Bear* (2018) 25 Cal.App.5th 490, 498-499.) These "principles apply in the criminal context" as well. (*People v. Huerta* (2016) 3 Cal.App.5th 539, 544 [stating, in dicta, that liberal amendment principles apply to Proposition 47 petitions].) Recently, the court in *Bear*, following a statutory analysis, concluded "In view of the initiative's purposes and provisions, as well

as the long-standing policy of resolving litigation on the merits, we construe section 1170.18 as conferring discretion on the trial courts to grant Proposition 47 petitioners leave to amend their petitions." (*Bear*, at p. 500.)

In sum, the provisions in Proposition 47 and amended section 1170.18 support a liberal construction of section 1170.18 to allow a timely successive or second petition. In this case, defendant's second petition in 2018 was timely, because it was filed well within the amended deadline for filing such a petition. (§ 1170.18, subd. (j) [petition or application generally must be filed on or before Nov. 4, 2022].)

D. *Eligibility for Relief*

"A defendant seeking resentencing under section 1170.18 bears the burden of establishing his or her eligibility, including by providing in the petition a statement of personally known facts necessary to eligibility. [Citations.]" (*People v. Page* (2017) 3 Cal.5th 1175, 1188.) If the defendant fails to meet this burden, the trial court's order denying the petition must be affirmed, even if the trial court expressed a different reason for denying the petition. (*Perkins*, *supra*, 244 Cal.App.4th at p. 139.) "[O]n appeal we are concerned with the correctness of the superior court's determination, not the correctness of its reasoning. [Citation.] '"[W]e may affirm a trial court judgment on any [correct] basis presented by the record whether or not relied upon by the trial court. [Citation.]" [Citation.]' [Citation.]" (*Ibid*.)

A defendant submitting a section 1170.18 petition and arguing that a theft crime should be resentenced as a misdemeanor, because the value of the property stolen was

$950 or less, has the initial burden of presenting evidence of the value of the property. (*Perkins*, *supra*, 244 Cal.App.4th at pp. 136-137; *People v. Johnson* (2016) 1 Cal.App.5th 953, 964-965 (*Johnson*); *Sherow*, *supra*, 239 Cal.App.4th at p. 879.)

Some or all of the information or evidence necessary to enable the court to determine a defendant's eligibility must accompany the petition. (*Sherow*, *supra*, 239 Cal.App.4th at p. 880; *Perkins*, *supra*, 244 Cal.App.4th at pp. 136-137, 140; *Johnson*, *supra*, 1 Cal.App.5th at p. 970.) "In some cases, the uncontested information in the petition and record of conviction may be enough for the petitioner to establish . . . eligibility" for recall of his felony sentence. (*People v. Romanowski* (2017) 2 Cal.5th 903, 916 (*Romanowski*).) More often, however, excluding evidence outside the record of conviction will impede a defendant from meeting his or her burden to prove eligibility under Proposition 47, which often turns on establishing key facts not previously adjudicated, e.g., when newly relevant evidence was not an element at the time defendant was convicted, or when a defendant pled guilty. (*Ibid*.)

Where eligibility for resentencing turns on facts not established by the record of conviction, the court may require an evidentiary hearing if it "'finds there is a reasonable likelihood that the petitioner may be entitled to relief and [his] entitlement to relief depends on the resolution of an issue of fact.' [Citations.]" (*Romanowski*, *supra*, 2 Cal.5th at p. 916.) That evidence can come from any competent source. (See *Johnson*, *supra*, 1 Cal.App.5th at pp. 968, 971 [petitioner seeking recall of sentence under Proposition 47 may present probative evidence from any source]; *Perkins*, *supra*, 244

Cal.App.4th at p. 140, fn. 5 [petitioner may use declarations or any probative evidence]; *Sherow, supra*, 239 Cal.App.4th at p. 880 [petitioner's testimony about the nature of items taken].) In a case such as this, new evidence offered to demonstrate the value of stolen property was less than $950 may be presented in various forms. Of course, facts in the record of conviction relevant to the value of the property may be relied on. (*Perkins*, at p. 137.) A declaration from the defendant or a witness containing "testimony about the nature of the items taken" may also be informative, even sufficient. (See *Sherow*, at p. 880.) If and once the defendant makes this showing, the People have an opportunity to attempt to demonstrate defendant's ineligibility for resentencing. (*Johnson*, at p. 965.)

If the trial court determines defendant has submitted evidence sufficient to create a dispute as to the value, but has not established his or her eligibility, the court may "permit further factual determination." (*Sherow, supra*, 239 Cal.App.4th at p. 880.) Proof of eligibility for resentencing or redesignation of a conviction must be made by a preponderance of the evidence. (*People v. Bush* (2016) 245 Cal.App.4th 992, 1001.)

Here, the People concede that defendant "passed the initial screening stage and met his prima facie burden by alleging the stolen property did not exceed $950," citing *People v. Washington* (2018) 23 Cal.App.5th 948, 955, but assert defendant "made no attempt to produce any additional evidence at the qualification hearing that was held before the court on May 18, 2018." The People also acknowledge that they did not offer any evidence to refute defense counsel's allegations about the value of the stolen items. However, the People believe they were not required to do so. We agree that defendant

did not establish the value of the stolen property at the hearing on his second petition in May 2018. Indeed, defense counsel admitted at the hearing that she was unable to produce any additional evidence concerning the value of the three stolen items, with the exception of the damaged package.

Nonetheless, the trial court denied the second petition based on its mistaken belief "the same petition was previously denied on the merits, and there's no new or additional information or no new law on the subject." That was error. Excluding evidence outside the record of conviction may impede a defendant from meeting his or her burden to prove eligibility under Proposition 47, if that evidence was not an element at the time defendant was convicted. (*Romanowski*, *supra*, 2 Cal.5th at p. 916; *Johnson*, *supra*, 1 Cal.App.5th at p. 968; *Perkins*, *supra*, 244 Cal.App.4th at p. 140.) In the present matter, new evidence was necessary in order for defendant to attempt to demonstrate his eligibility for reduction of his commercial burglary conviction within the misdemeanor statute's $950 threshold, a monetary limit that is not an element of his felony conviction.

Although the court's stated rationale was mistaken, here, defense counsel told the court she was unable to find any evidence of the stolen items' value and did not present an offer of proof of evidence of their value. The court's error is therefore harmless. (See *People v. Banks* (2014) 59 Cal.4th 1113, 1183, disapproved on other grounds in *People v. Scott* (2015) 61 Cal.4th 363, 391, fn. 3 [erroneous exclusion of evidence harmless where defendant failed to make offer of proof that would establish prejudice].) In addition, the trial court's implicit refusal to consider defense counsel's declaration and the police

report as evidence that the value of the stolen property did not exceed $950 was also harmless error because those documents did not provide evidence of the value of the stolen goods. (See *People v. Pak* (2016) 3 Cal.App.5th 1111, 1121 (*Pak*) [finding no probative evidence sufficient to support Proposition 47 petition where "neither counsel, appellant, nor any witness provided sworn testimony or a sworn affidavit about the value of the property"].) Thus, independent of the court's mistaken refusal to consider the second petition and the evidence attached to the second petition, defendant failed to provide competent evidence that the value of the stolen property did not exceed $950. Accordingly, he failed to satisfy his burden of proof as to eligibility. (*Sherow*, *supra*, 239 Cal.App.4th at pp. 878-880.) Here defendant failed to establish that the value of the property in question did not exceed $950.

Under Proposition 47, eligibility often turns on the simple factual question of the value of the stolen property. In most such cases, the value of the property was not important at the time of conviction. Therefore, the record may not contain sufficient evidence to determine its value. For that reason, defendant is not precluded from filing a new petition supported by competent or other probative evidence as sufficient proof of value of the stolen goods to establish eligibility for relief under Proposition 47. (See *Pak*, *supra*, 3 Cal.App.5th at p. 1121 [affirming the denial of Proposition 47 petition without prejudice, explaining that "[i]n any new petition, appellant should describe the stolen property and attach some evidence, whether a declaration, court documents, record

citations, or other probative evidence showing she is eligible for relief"]; *Perkins*, *supra*, 244 Cal.App.4th at pp. 140.)

On remand, the trial court has substantial flexibility to devise practical procedures to implement Proposition 47, so long as those procedures are consistent with the proposition and any applicable statutory or constitutional requirements. (*Perkins*, *supra*, 244 Cal.App.4th at p. 138.) The court may exercise its discretion to develop a factual record to address defendant's eligibility by requesting the submission of additional evidence or by conducting a hearing to determine the fair market value of the stolen goods. Both parties will have an opportunity to litigate the valuation issue under the applicable standards on remand. We express no opinion on the merits of that issue.

As a guidance to the court and the parties, under section 484, subdivision (a), which defines theft, "'[i]n determining the value of the property obtained, for the purposes of this section, the reasonable and fair market value shall be the test.'" "[C]ourts have long required section 484's 'reasonable and fair market value' test to be used for theft crimes that contained a value threshold . . . ." (*Romanowski*, *supra*, 2 Cal.5th at p. 914 [Proposition 47 did not change this valuation approach].) California courts have established this general principle for determining the value of property in a theft crime. If defendant subsequently finds evidence establishing his eligibility, he may file a successive petition with the trial court. (See *Perkins*, *supra*, 244 Cal.App.4th at p.142.) Based on the forgoing, we affirm the order denying defendant's petition for

resentencing of his conviction for receipt of stolen property without prejudice to consideration of a subsequent petition that supplies evidence of his eligibility.

IV

DISPOSITION

The trial court's order denying defendant's second petition is affirmed without prejudice to defendant's right to file a new, properly supported petition offering evidence of his eligibility for the requested relief, i.e. the value of the stolen property.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.